(j) At the time of Annie Stone's death and prior thereto the trustee of the trust property was a resident of the State of New York.

(k) The Commissioner included in the gross estate of the decedent, Annie Stone, the value of the trust property at the time of her death.

(6) The petitioner prays for relief from the deficiency asserted by the respondent in the following particulars:

(a) That this Board may determine that the trust property referred to in subdivision (g) of paragraph (5) above is not a part of the gross estate of the decedent, Annie Stone, subject to the Federal estate tax.

7 (b) That this Board may determine that the deficiency asserted by the respondent is excessive by $6,061.15.

Wherefore, petitioner prays that this Board may hear and redetermine the deficiency herein alleged.

BERNHARD KNOLLENBERG,
Counsel for Petitioner,
25 Broadway, New York, N. Y.

[*Duly sworn to by E. Morgan Grinnell, jurat omitted in printing.*]

8 *Exhibit A to petition*

Office of Commissioner of Internal Revenue

Address reply to Commissioner of Internal Revenue and refer to MT-ET-C1.-2439-CW. District of 3rd New York. Estate of Annie Stone. Date of death—September 24, 1927.

TREASURY DEPARTMENT,
Washington, May 23, 1930.

E. MORGAN GRINNELL, *Executor,*
Estate of Annie Stone,
910 Park Avenue, New York, New York.

SIR: The Bureau has examined the protest filed on behalf of the above-named estate against the tentative findings set forth in the letter addressed to the executor by this office under date of October 15, 1929. The deficiency in Federal estate tax hereby determined amounts to $9,628.78, and is fully explained in the attached statement consisting of two pages, showing the action of the Bureau with respect to the protest.

9 In accordance with the provisions of title III of the Revenue Act of 1926, you are allowed sixty days from the date of the mailing of this letter (not counting Sunday as the sixtieth day) within which to file a petition with the United States Board of Tax Appeals for a redetermination of the deficiency. Any such petition must be addressed to the United States Board of Tax Appeals,

Earle Building, Washington, D. C., and must be mailed in time to reach the said Board within the 60-day period prescribed.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed, and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the decision, which has become final, has been made, the unpaid amount of such assessment must be paid upon notice and demand from the collector of internal revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute the enclosed form 890, waiving (1) your right to file a petition with the United States Board of Tax Appeals and (2) the restrictions on the assessment and collection of such deficiency, and to forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of the Estate Tax Division, Miscellaneous Tax Unit. In the event that you acquiesce in only a part of the determination, the enclosed form of waiver should
10 be executed with respect to the amount of the deficiency to which you agree.

Respectfully,

(Signed) ROBT. H. LUCAS,
Robt. H. Lucas,
Commissioner.

Enclosures:
Statement,
Waiver—Form 890.

The protest is directed against the following items:

Gross estate

Powers of appointment	Returned	Tentatively determined	Determined
Value of property over which the decedent had a power of appointment created by the will of John O. Stone, deceased	$0.00	$75,764.26	$75,764.26

The decedent, under the provisions of the will of her father, John O. Stone, received a life interest in a portion of his residuary estate with the right to appoint that portion generally by her last will and testament. It was provided in said will of John O. Stone that in default of the execution of the power by Annie Stone that said portion was to go to her next of kin.

11 The decedent, Annie Stone, having died without issue provided under paragraph five of her will as follows:

"All the rest, residue, and remainder of my estate, both real and personal, of every kind and description and wheresoever situated, including whatever property or money I am allowed to dispose of by

will under the will of my dear father, the late Dr. John O. Stone, of the city of New York, I give, devise, and bequeath in equal shares to my dear sisters Ellen J. Stone and Sarah J. Grinnell, the latter the wife of E. Morgan Grinnell, to have and to hold the same to them, their heirs, executors, administrators, and assigns forever."

By an instrument in writing executed February 28, 1928, the sisters of Annie Stone renounced their right to receive the property under paragraph five of her will but elected to take this property under the provisions of the will of their father, John O. Stone. It is the contention of the estate that on account of this election the sisters received this trust property not by virtue of an exercise of a power of appointment vested in Annie Stone, but as remaindermen under the will of their father, John O. Stone, the creator of the power, and therefore the value of this property should not be included in the estate of Annie Stone for Federal estate tax.

The question of the taxability of such a power was before the United States Board of Tax Appeals in the case of Edward J. Hancey, executor of the will of Marie C. Howe v. The Commissioner of Internal Revenue. In an opinion promulgated by the
12 United States Board of Tax Appeals on September 25, 1929, and reported in 17 B. T. A. 464, it is held that notwithstanding the election by the beneficiaries to accept the property as remaindermen under the will of the original donor of the power, nevertheless the value of the property is taxable for Federal estate tax as part of the gross estate of the donee since the donee of the power had exercised her right to appoint by the provisions of her will.

In view of the foregoing no adjustment is being made under this schedule.

Deductions	Returned	Tentatively determined	Determined
Attorneys' fees	$20,000.00	$25,000.00	$25,403.13
Miscellaneous administration expenses	1,629.88	1,629.88	3,129.88
Debts of decedent	3,517.14	3,517.14	23,005.03

It is apparent from the evidence submitted by the estate that deduction should be allowed in the amounts indicated in the determined column. The total of the tentative deductions is therefore being increased in the sum of $25,292.02.

The following computation shows the Federal estate tax liability of this estate, which is hereby made final:

Gross estate	$1,154,638.81	$1,300,457.69	$1,300,457.69
Deductions	160,355.58	159,808.10	185,100.12
Net estate	994,283.23	1,140,649.59	1,115,357.57
Tax liability	48,099.83	59,751.97	57,728.61
Deficiency		11,652.14	9,628.78

The deficiency bears interest at the rate of six per centum per annum from one year after decedent's death to the date of
13 assessment, or to the thirtieth day after the filing of a waiver of the restrictions on the assessment, whichever is the earlier.

The record indicates that the estate is claiming credit on the basis of the return in the sum of $38,479.86. The evidence on file shows that the estate is entitled to credit in the sum of $38,364.33. The claim for credit is therefor being disallowed in the sum of $115.53. In addition to the deficiency and interest, there should be paid to the collector of internal revenue any undischarged returned tax and interest due to the disallowance of credit.

Before United States Board of Tax Appeals

[Title omitted.]

Answer

Filed Aug. 7, 1930

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, general counsel, Bureau of Internal Revenue, in
14 answer to the petition of the above-named taxpayer, admits and denies as follows:

(1) Admits the allegations contained in the paragraph of the petition numbered (1).

(2) Admits the allegations contained in the paragraph of the petition numbered (2).

(3) Admits so much of the paragraph of the petition numbered (3) as alleges that the taxes in controversy are estate taxes, but denies that the amount in controversy is $6,061.15, as alleged in the paragraph of the petition numbered (3).

(4) Denies that the determination of the deficiency tax is based upon errors as alleged in the paragraph of the petition numbered (4).

(5) (a) Admits so much of subparagraph (a) of the paragraph of the petition numbered (5) as alleges that the decedent, Annie Stone, died on September 24, 1927, but denies every other allegation contained in subparagraph (a).

(b), (c), (d), (e), (f), and (g). Admits the allegations contained in subparagraphs (b), (c), (d), (e), (f), and (g) of the paragraph of the petition numbered (5).

(h) Denies the allegations contained in subparagraph (h) of the paragraph of the petition numbered (5).

(i), (j), and (k). Admits the allegations contained in subparagraphs (i), (j), and (k) of the paragraph of the petition numbered (5).

(6) Denies each and every allegation contained in the petition not hereinbefore specifically admitted or denied.

15 Wherefore, it is respectfully prayed that the determination of the Commissioner be approved.

(Signed) C. M. CHAREST,
C. M. Charest,
General Counsel,
Bureau of Internal Revenue.

Of counsel:
LEWIS S. PENDLETON,
Special Attorney,
Bureau of Internal Revenue.
EGS/Imh–8/1/30.

Before United States Board of Tax Appeals

Docket No. 49401

E. MORGAN GRINNELL, AS EXECUTOR OF THE ESTATE OF ANNE STONE, Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Harry J. Rudick, Esq., for the petitioner.
P. A. Bayer, Esq., for the respondent.

Memorandum opinion

VAN FOSSAN: In this case we are asked to set aside a deficiency of $6,061.15 in estate taxes. The matter was submitted for
16 decision on the pleadings supplemented by certain documents.

The only issue involved is whether certain property over which the decedent had and exercised a general power of appointment was properly included in the taxable estate.

The decedent, Annie Stone, a resident of the United States, died on September 24, 1927. She had a general power of appointment, exercizable by will over certain property which originally formed part of the estate of her father, John O. Stone. The said John O. Stone died a resident of the State of New York in 1876 and by his will, duly probated in 1876, he created for the benefit of the present decedent, Annie Stone, a trust fund from which she was to receive the income during her lifetime, and over the principal of which she was to have a general power of appointment. The pertinent provisions of John O. Stone's will were as follows:

"Fifth. All the residue of my estate, real and personal, whatsoever and wheresoever, including the reversion of the house no. 27 West 23rd Street, or the proceeds thereof upon the termination of my wife's life estate, I give, devise, and bequeath unto my executors,

hereinafter named, and the survivor of them and their successors lawfully to be appointed, in trust and to, for, and upon the uses following, that is to say, to divide the same into as many shares as there shall be children of mine surviving me or who shall have died before me leaving issue surviving me, to keep the whole thereof well and safely invested so that it may produce a regular income,
17 with power from time to time as occasion may require to change the investment of the same or any part thereof, and to apply the income of each share until the child for whom that share is designated shall attain the age of twenty-one years, to the suitable maintenance and education of such child, and from and after the time when each of my children who shall survive me shall attain the age of twenty-one years, to apply to her use for life the income of the share set apart to her as aforesaid upon her sole and separate receipt free from all control, claim, or obligation of any husband she may have, and upon the death of my children respectively their respective share of my estate shall go and be applied to such persons and such uses as they respectively may appoint by last will and testament, and in default of such ap'ointment their respective shares of my estate shall go and belong to their children or issue respectively, by right of representation, or in default of such issue to their next of kin, and as respects the shares of my said residuary estate set apart for the issue of children of mine who shall have died before me to apply the income of each such share to their education and maintenance during minority and to pay over or transfer to each of such issue upon attaining or who shall have attained the age of twenty-one years, his or her share in full."

John O. Stone was survived by his widow (who died many
18 years before the death of the present decedent), and by his three daughters, Annie Stone (the present decedent), Ellen J. Stone, and Sarah J. Grinnell, his only children, heirs at law and next of kin. Pursuant to the provisions quoted above, one-third of John O. Stone's residuary estate was held in trust for the benefit of the present decedent, Annie Stone, during her lifetime, subject to the provision that the principal of such trust fund on her death should be paid over "to such persons, and for such uses" as she might "appoint by last will and testament, and in default of such appointment", to her issue, or in default of such issue, to her next of kin.

Annie Stone, the present decedent, died unmarried and without issue, and left as her sole next of kin, her sister, the said Ellen J. Stone, and Sarah J. Grinnell. By her will the said Annie Stone left the residue of her estate "including whatever property or money I am allowed to dispose of by will under the will of my dear father, the late Dr. John O. Stone, of the city of New York", in equal shares to her two sisters, the said Ellen J. Stone and Sarah J. Grinnell. The pertinent provisions of said will of Annie Stone were as follows:

"Fifth. All the rest, residue, and remainder of my estate, both real and personal, of every kind and description and wheresoever situated, including whatever property or money I am allowed to dispose of by will under the will of my dear father, the late Dr. John O. Stone, of the city of New York, I give, devise, and bequeath
in equal shares to my dear sisters Ellen J. Stone and Sarah
19 J. Grinnell, the latter the wife of E. Morgan Grinnell, to
have and to hold the same to them, their heirs, executors, administrators, and assigns forever."

At the time of Annie Stone's death, the value of the property left in trust for her life under the fifth paragraph of her father's will and over which she had a general power of appointment was $75,764.26.

In February 1928 Ellen J. Stone and Sarah J. Grinnell executed an instrument of election, whereby they renounced their right to receive said property under the fifth paragraph of the decedent Annie Stone's will and elected to take such property under the fifth paragraph of the will of their father, John O. Stone. The pertinent language of said certificate of election was as follows:

"Now, therefore, we, the undersigned, Ellen J. Stone and Sarah J. Grinnell, being the surviving sisters of said Annie Stone, deceased, and her only next of kin, do hereby severally elect to take directly from said John O. Stone under the provisions of his will, the title to the property heretofore held in trust for the said Annie Stone, deceased, instead of under the exercise of the power of appointment given to the said Annie Stone by the will of her father, said John O. Stone, exercised by said Annie Stone by the fifth article of her said will."

The said certificate of election was filed in the Surrogates
20 Court of the County of New York (State of New York) in
connection with the accounting of the trustees of John O. Stone; and pursuant to same it was ordered and decreed by the said Surrogates Court as follows:

"And it further appearing from the instrument of election filed herewith that Ellen J. Stone and Sarah J. Grinnell, the beneficiaries of the will of Annie Stone, deceased, and appointees under exercise of the power of appointment therein made, have elected to take under the terms of the will of said decedent, John O. Stone, as remaindermen of the trust for said Annie Stone, deceased, instead of as appointees under her will, it is hereby further

"Ordered, adjudged, and decreed that the payments heretofore made to them as remaindermen of said trust as set forth in the account, be and the same hereby are ratified and confirmed, and that the balance of principal of said trust if any remaining after making payments hereinabove provided for be paid over in equal shares to said Ellen J. Stone and Sarah J. Grinnell."

At the time of Annie Stone's death and prior thereto the trust property in question was physically located in the State of New York and the trustee of the trust property was a resident of the State of New York.

Petitioner on brief admits that this case comes within the rule laid down in Edward J. Hancy, Exec., 17 B. T. A. 464. He contends, however, that in the Hancy case the Board erred in its
21 conclusion. The Hancy case has been cited by the Board as authority in numerous later decisions and it stands as the considered judgment of the board. See Mary M. Lee, Executrix, 18 B. T. A. 251, affd. C. A. D. C. 57 Fed. (2d) 399, certiorari denied 286 U. S. 563; Bank of New York and Trust Co., Executor, 21 B. T. A. 197; Cortland F. Bishop, Executor, 23 B. T. A. 920; Joseph Walker Wear et al., Executors, 26 B. T. A. 684. Certain observations made in the last cited case are equally pertinent here:

"Petitioners concede that the power was a "general power." It is established by the facts that it was exercised. The exercise of the power brought the case within the wording and intent of the Federal tax statute and justified the respondent's action. * * *

"Nor are we disturbed or hindered in reaching the above conclusion because in a case arising under the same documents it was decided by the Orphans' Court of Philadelphia County that the attempted exercise of the power of appointment was a nullity and the award should have been made to the distributees under the will of Thomas Potter. Whatever may have been the effect of this decision in the local administration of the estate, and it would seem that under the facts it was of no effect, the only announced reason for amending the earlier decision being to bring the parties within the rule announced in Estate of Helen M. W. Grant, 13 B. T. A.
22 174, this decision is not conclusive of the question before us. The Board of Tax Appeals is a Federal tribunal engaged in deciding questions presented under the Federal taxing acts. Though there are certain restricted situations in which the local may be controlling, in the present case we are not so confined. The statute which we are here interpreting was enacted by the Congress of the United States to meet certain situations and achieve certain results. As has been said by the Supreme Court, 'the act of Congress has its own criteria', and in determining whether or not there has been a transfer under the Federal statute we must look to the interpretations adopted by the Federal courts and tribunals." See Edward J. Hancy, supra; Chase National Bank v. United States, 278 U. S. 327; Pennsylvania Co., etc., v. Lederer, supra; Fidelity Philadelphia Trust Co. v. McCaughn, 34 Fed. (2d) 600.

Decision will be entered for the respondent.

Enter:

Entered May 5, 1933.

23 Before United States Board of Tax Appeals

Washington

Docket No. 49401

E. MORGAN GRINNELL, AS EXECUTOR OF THE ESTATE OF ANNIE STONE, petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Decision

Pursuant to the determination of the Board, as set forth in its memorandum opinion entered May 5, 1933, it is

Ordered and decided: That there is a deficiency of $9,628.78 in estate taxes.

Enter:

Entered May 10, 1933

[SEAL] (Signed) ERNEST H. VAN FOSSAN,
Member.

24 Before United States Board of Tax Appeals

[Title omitted.]

Petition for review

Filed May 25, 1933

E. Morgan Grinnell, as executor of the estate of Annie Stone, deceased, hereby petitions for the review of the decision of the United States Board of Tax Appeals rendered on the 10th day of May, 1933, which approves a deficiency of $9,628.78 in the estate tax payable by the decedent's estate.

I

STATEMENT OF NATURE OF CONTROVERSY

1. On May 23, 1930, the respondent mailed to the petitioner a notice of a deficiency of $9,628.78 in the Federal estate tax on the estate of Annie Stone, hereinafter referred to as the decedent. Of this alleged deficiency $6,061.15 was based on a ruling of the respondent that certain property over which the decedent had a power of
25 appointment was required to be included in her gross estate for the purpose of computing the tax.

2. Thereafter, within sixty days of May 23, 1930, the petitioner filed with the United States Board of Tax Appeals a petition requesting the redetermination of the said deficiency. Said petition, after alleging the jurisdictional facts, alleged that the Com-

missioner erred in including in the gross estate of the decedent $75,764.26, representing the value at the date of decedent's death of certain property over which the decedent had a power of appointment. The said property originally formed part of the estate of decedent's father, John O. Stone, who died in 1876, a resident of New York. By his will he created a trust of the property, giving the decedent the income therefrom for her life and a general power of appointment over the remainder, exercisable by will. In default of the exercise of the power, the property was to pass to decedent's next of kin. The decedent by her will purported to exercise the power in favor of the same persons who would take in the event of a default in the exercise of the power. The said persons renounced their right to receive the property as appointees under the will of the decedent and elected instead to take it as remaindermen under the will of decedent's father, the donor. The Commissioner of Internal Revenue included the property in the decedent's gross estate on the ground that it represented "property passing under a general power of appointment exercised by the decedent by will." (Sec. 302 [f] of the Revenue Act of 1926.) All of these facts were alleged in the petition.

26 3. Thereafter the respondent filed with the said Board of Tax Appeals his answer to the afore-mentioned petition. The said answer admitted the jurisdictional facts and substantially all of the other facts, but denied error.

4. The cause being at issue under the rules of practice of the said Board of Tax Appeals upon the filing of the answer duly came on for hearing on January 17, 1933, at New York, New York, before Hon. Ernest H. Van Fossan. At the hearing the matter was submitted for decision on the pleadings, supplemented by certain documents. Thereafter on May 5, 1933, the said Board rendered a memorandum opinion and decided that the decedent had exercised the power of appointment and that the property subject thereto was properly included in the taxable estate. The said memorandum opinion contained a statement of the facts based on the pleadings and documents, the relevant portions of the documents being given in said statement of facts. On May 10, 1933, the Board rendered its final order of redetermination, approving the deficiency as determined by the respondent.

II

DESIGNATION OF COURT OF REVIEW

The petitioner being aggrieved by the said opinion, decision, and order, and being an inhabitant of the city and State of New York, desires a review in accordance with the provisions of the Rev-

27 enue Act of 1926, by the United States Circuit Court of Appeals for the Second Circuit, within which circuit is located the office of the collector of internal revenue to whom said petitioner made the estate tax return and paid the estate tax.

III

ASSIGNMENTS OF ERROR

The petitioner, as a basis for review, makes the following assignments of error:

1. The Board of Tax Appeals erred in holding that the decedent exercised the power of appointment.

2. The Board of Tax Appeals erred in holding that the property subject to the power should be included in the decedent's taxable estate.

3. The Board of Tax Appeals erred in not determining that the alleged deficiency should be reduced by $6,061.15.

Wherefore, your petitioner prays that the United States Circuit Court of Appeals for the Second Circuit may review the said decision, opinion, and order and reverse and set aside the same and that the clerk of the United States Board of Tax Appeals be directed to transmit and deliver to the clerk of the said court certified copies of all and every of the documents necessary and material to the presentation and consideration of the foregoing petition for
28 review, as required by the rulings of said court and statutes made and provided.

(S.) BERNHARD KNOLLENBERG,
Attorney for Petitioner,
25 Broadway, New York, N. Y.

[*Duly sworn to by Bernhard Knollenberg, jurat omitted in printing.*]

29 Before United States Board of Tax Appeals

[Title omitted.]

Statement in lieu of statement of evidence

Filed June 22, 1933

This proceeding was submitted for decision on the pleadings, supplemented by certain documents. All of the facts necessary to the determination of the present appeal are contained in the memorandum opinion of the Board.

Dated, June 15th, 1933.

BERNHARD KNOLLENBERG,
Counsel for Petitioner.
E. BARRETT PRETTYMAN,
Counsel for Respondent.

30 Before United States Board of Tax Appeals

[Title omitted.]

Praecipe for record

Filed June 22, 1933

To the CLERK OF THE UNITED STATES BOARD OF TAX APPEALS:

You will please prepare and, within sixty days from the date of the filing of the petition for review in the above entitled case, transmit to the Clerk of the United States Circuit Court of Appeals for the Second Circuit certified copies of the following documents:

1. The docket entries of proceedings before the United States Board of Tax Appeals in the case above entitled.
2. Pleadings before the Board.
3. Memorandum opinion and decision of the Board.
4. Petition for review.

31 5. Statement in lieu of statement of the evidence.

The foregoing to be prepared, certified, and transmitted, as required by law and the rules of the United States Circuit Court of Appeals for the Second Circuit.

BERNHARD KNOLLENBERG,
Bernhard Knollenberg,
Attorney for Petitioner.

JUNE 21, 1933.

32 [Clerk's certificate to foregoing transcript omitted in printing.]

33 In United States Circuit Court of Appeals for the Second Circuit

No. ——

E. MORGAN GRINNELL, EXECUTOR OF THE ESTATE OF ANNIE STONE, petitioner

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Motion for substitution

Comes now the above-named petitioner and moves the court that Guy T. Helvering, Commissioner of Internal Revenue, be substituted for David Burnet as respondent herein, and in support of said motion respectfully shows:

1. That the resignation of said David Burnet, who was Commissioner of Internal Revenue when the petition for review in this proceeding was filed, was duly accepted and he ceased to be such officer on May 15, 1933.

2. That Guy T. Helvering was duly appointed and confirmed as Commissioner of Internal Revenue to succeed the said David Burnet; that he qualified as such officer and entered upon the duties of said office on June 6, 1933, since which date the said Guy T. Helvering has been and now is Commissioner of Internal Revenue.

3. That there is a substantial need for continuing and maintaining this proceeding and obtaining an adjudication of the questions involved, for otherwise the order of the United States Board of Tax Appeals herein sought to be reviewed will become final and the right to have the legality thereof determined will be extinguished.

This motion is made pursuant to the provisions of section 11 of the act of February 13, 1925, c. 229, 43 Stat. 941 (U. S. C., title 28, sec. 780).

Dated June 7, 1933.

BERNHARD KNOLLENBERG,
Attorney for Petitioner.

The undersigned, attorney for Guy T. Helvering, Commissioner of Internal Revenue, hereby expressly consents to the substitution sought by the above motion.

SEWALL KEY,
Sewall Key,
Special Assistant to the Attorney General,
Attorney for Guy T. Helvering,
Commissioner of Internal Revenue.

In United States Circuit Court of Appeals

Order of substitution

Upon motion of the petitioner, expressly consented to by Guy T. Helvering, Commissioner of Internal Revenue, it is hereby ordered that said Guy T. Helvering, as such officer, be and he hereby is substituted for David Burnet, former Commissioner of Internal Revenue, and that this proceeding be so continued and maintained.

WM. PARKIN, *Clerk.*

Dated July 15, 1933.

34 In United States Circuit Court of Appeals for the Second Circuit

No. 120. October term, 1933

Argued April 10, 1934. Decided April 30, 1934

E. MORGAN GRINNELL, AS EXECUTOR OF THE ESTATE OF ANNIE STONE, Deceased, petitioner-appellant

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT-APPELLEE.

Appeal from the Board of Tax Appeals.

Before MANTON, SWAN, AND AUGUSTUS N. HAND, Circuit Judges.

The Commissioner of Internal Revenue determined a deficiency in estate tax against the estate of Annie Stone, who died on September 24, 1927, a resident of Connecticut. From an order of the Board of Tax Appeals affirming such determination, the taxpayer E. Morgan Grinnell, as executor of the will of Annie Stone, appeals. Reversed.

Bernhard Knollenberg, of New York City (Allen E. Foster and Harry J. Rudick, both of New York City, of counsel), for petitioner-appellant.

Frank J. Wideman, Asst. Atty. Gen., and Sewall Key and John MacC. Hudson, Sp. Assts. to Atty. Gen., for respondent-appellee.

Opinion

AUGUSTUS N. HAND, *Circuit Judge:*

The question involved upon this appeal is whether a trust fund created by the will of John O. Stone, who died in 1876, a resident of New York, over which his daughter Annie Stone, who died September 24, 1927, had a power of appointment by will, should be included in her gross estate for the purpose of determining the federal estate tax.

The devolution of the property in question is governed by article fifth of the will of John O. Stone. Under that article the testator bequeathed his residuary estate to his executors in trust to divide the same into as many shares as he should leave children him surviving and to apply the income of each share to the life use of the child for whom it was set apart. In disposing of the remainder interests, he provided that:

"Upon the death of my children respectively their respective share of my estate shall go and be applied to such persons, and such uses as they respectively may appoint by last will and testament, and in default of such appointment their respective shares of my estate shall go and belong to their children or issue respectively, * * * and in default of such issue to their next of kin. * * *"

John O. Stone left him surviving his wife, Catherine C. Stone, who died many years before the death of Annie Stone, and his three daughters Annie Stone, Ellen J. Stone, and Sarah J. Grinnell, who were his only children, heirs at law, and next of kin. Annie Stone, the decedent, died unmarried, without issue, and left as her sole next of kin, her sisters, Ellen J. Stone and Sarah J. Grinnell. The value of the property left in trust for the life of Annie Stone under article fifth of her father's will, and over which she had the power of appointment at the time of her death, was $75,764.26. She died on September 24, 1927, a resident of the State of Connecticut, leaving a will which was admitted to probate January 4, 1928, in which she provided as follows:

"Fifth. All the rest, residue and remainder of my estate both real and personal, of every kind and description and wheresoever situated including what property or money I am allowed to dispose of by will under the will of my dear father, the late Dr. John O. Stone, of the city of New York, I give, devise, and bequeath in equal shares to my dear sisters Ellen J. Stone and Sarah J. Grinnell, the latter the wife of E. Morgan Grinnell, to have and to hold the same to them, their heirs, executors, administrators, and assigns forever."

The property over which Annie Stone had a power of appointment was physically located in the State of New York, and at the time of her death, and prior thereto, the trustee thereof was a resident of that State.

In February 1928 Ellen J. Stone and Sarah J. Grinnell executed an instrument of election whereby they renounced their right to receive their shares of the trust fund, theretofore held for the life of Annie Stone, under the fifth article of the will of their father, John O. Stone.

The Commissioner included in the gross estate of the decedent, Annie Stone, the value of the trust property at the time of her death over which she had assumed to exercise the power of appointment given her by her father's will, and accordingly found a tax deficiency against her estate of $9,628.78. Her executor petitioned the Board of Tax Appeals for a redetermination of the deficiency in the estate tax upon the estate of Annie Stone by excluding the value of the trust property from her gross estate. The Board affirmed the action of the Commissioner and fixed the deficiency at $9,628.78.

The effect of the bequest under the will of John O. Stone, who died a resident of New York, and of the attempted exercise of the

power of appointment over the trust estate created thereby for the life use of his daughter Annie Stone, is determined by the law of New York. Restatement of the Law of Conflict of Laws, §§ 283, 307, and 328, American Law Institute.

Under the New York law, Ellen J. Stone and Sarah J. Grinnell, who were the next of kin of Annie Stone, had the right of election and might accept title either as appointees under the power which she attempted to exercise, or as remaindermen under the will of John O. Stone. As Judge Vann said in Matter of Lansing, 182 N. Y. 238, 245, 74 N. E. 882, 884, about a testamentary power exercised in favor of the same person who would take title if it had not been exercised:

"An appointee under a power has the right of election, the same as a grantee under a deed. 'It is essential to the legal operation of a deed that the grantee assents to receive it. It cannot be imposed upon him, and there can be no delivery without an acceptance.' Jackson v. Dunlap, 1 Johns. Cas. 114, 116, 1 Am. Dec. 100; Jackson v. Phipps, 12 Johns. 418. He can accept the title tendered or reject it, in his discretion. It cannot be forced upon him against his will. He cannot be compelled to receive additional evidence of title when he does not want it, and does not need it because his title is perfect without it. His consent is necessary before the attempt to exercise the power becomes binding upon him the same as consent is necessary in making a contract or agreement."

In Matter of Lansing, supra, the facts closely resembled those here. There the appointee chose to take under the original will and not under the exercise of the power, and the Court of Appeals held that the trust estate which passed to her was not subject to the New York transfer tax because the death of the original testator from whom the property arose was prior to the enactment of a Transfer Tax Act and the property passed under his will and not by virtue of the exercise of the power. The court remarked at page 243 of 182 N. Y., 74 N. E. 882, 884:

"While the situation was subject to change under the power of appointment, no change was made. Although the power was exercised in form, her title was perfect without it, and she derived no benefit from it. The power was to 'dispose of the remainder,' and the remainder was not disposed of, but continued where it was. The attempt to execute the power was not effective, because it did nothing. The exercise of a power which leaves everything as it was before is a mere form with no substance." Cf. Potter's Estate, 13 Pa. Dist. & Co. R. 667.

In the case at bar the next of kin of Annie Stone had executed an instrument of election in writing whereby they renounced their right to take under the power and elected to receive their share of the trust fund under the will of their father. They held a remainder interest in the capital of the trust estate which was alienable, devisable, and descendible under the New York law. It might have

been divested and diverted to other persons by an effective exercise of the power, but was not. Matter of Lansing, supra, is pre-
36 cisely in point unless section 302 of the Revenue Act of 1926 (26 U. S. C. A., § 1094) contains language which may differentiate it from the New York Transfer Tax Act (Consol. Laws, c. 60, § 220 et seq.). But we can discover nothing in the revenue act indicating that a fund appointed to the same persons who would take in remainder under the will of the donor, if the power were not exercised, is to be included in the estate of the person exercising the power or passes under the latter's will to appointees who are unwilling to accept the appointment.

Section 301 (a) of the Revenue Act of 1926 (26 U. S. C. A., § 1092) imposed an estate tax upon the transfer of the net estate of every decedent dying after its enactment, and section 302 (f) of the act (26 U. S. C. A., § 1094 (f) provided that, in valuing the gross estate, there should be included the value at the time of death of all property "passing under a general power of appointment exercised by the decedent (1) by will."

The trust estate here did not pass under the power of appointment for the reason that the appointees elected in writing to renounce their bequests under the will of Annie Stone and to take as remaindermen under their father's will, and for the further reason that, under the New York law, which governed the passage of title: "The attempt to execute the power was not effective, because it did nothing. The exercise of a power which leaves everything as it was before is a mere form, with no substance." Matter of Lansing, 182 N. Y. 238, 243, 74 N. E. 882, 884.

In Wear v. Commissioner, 65 F. (2d) 665, the Court of Appeals of the Third Circuit held that property bequeathed under a general power of appointment to the same persons who would have taken in remainder, had the power not been exercised, for purposes of Federal estate taxes, "passed" under the power and accordingly must, by section 302 of the Revenue Act of 1926, be included in the gross estate of the person exercising the power, and this, though the law of Pennsylvania, like that of New York, treated the property as passing under the will of the donor. In Lee v. Commissioner, 61 App. D. C. 33, 57 F. (2d) 399, the Circuit Court of Appeals of the District of Columbia reached the same conclusion, as did the Third Circuit Court of Appeals in the later case of Wear v. Commissioner, 65 F. (2d) 665. In Wear v. Commissioner, Judge Woolley said, at page 667:

"Death, with an exercise of the power in their favor, was the event that wrought the change. Then their estate, theretofore contingent upon the nonexercise of the power against them, became vested, like the interest of a beneficiary of a policy of life insurance becomes vested upon the death of the insured without exercising a reserved right to change the beneficiary, the value of which must, under the cases, be included in the gross estate of the insured for

purposes of taxation. Chase National Bank v. United States, 278 U. S. 327, 49 S. Ct. 126, 73 L. Ed. 405, 63 A. L. R. 388. The generating source of the change was the death of the donee without action adverse to them. That, too, was the generating source of the tax. And such a tax, we hold, the Federal Government, under its sovereign power to levy taxes, may lawfully impose upon the exercise of a power effecting such a change, to be determined by actual results thereby brought about rather than by consideration of rules which define and limit title of property, Tyler v. United States, 281 U. S. 497, 503, 50 S. Ct. 356, 74 L. Ed. 991, 69 A. L. R. 758, and to be measured (rather than determined) by the value of the property passing. * * *"

With all deference to the high authority of Judge Woolley and of the other judges of the Courts of Appeal of the Third Circuit and the District of Columbia, we feel constrained to differ with the conclusions they reached. It is conceded that the revenue act would not have imposed an estate tax upon the transfer if the remainder had vested in possession without an attempted exercise of the power of appointment. Therefore, it hardly seems right to say that: "The generating source of the change was the death of the donee without action adverse to them. That, too, was the generating source of the tax." Such reasoning would require the imposition of a tax under the act even though Annie Stone had died intestate, though the statute furnishes no warrant for taxation under such circumstances. The argument of the opinion in Wear v. Commissioner is concerned mainly with the constitutional authority of the Government to tax property where the source of the transfer was the death of the donee of a power "without action adverse" to persons having interests derived under the will of the donor. We need not differ with the conclusion that it might be taxed, but we think it was not taxed by an act directed only at property
37 "passing under a general power of appointment" because there was no such property here. The appointees not only declined to take the gift, but the appointment when exercised in favor of the same persons who would take irrespective of it was "a mere form with no substance" which the law of New York that regulates the passage of title has refused to recognize. Matter of Lansing, 182 N. Y. 238, 243, 74 N. E. 882. In a tax statute especially, such a doubtful imposition involving as it does an extension of the statute to cover powers of appointment, having no effective import, should not be sanctioned. Crooks v. Harrelson, 282 U. S. 55, 51 S. Ct. 49, 75 L. Ed. 156.

It is argued that there was a shifting of economic benefits on the death of Annie Stone, which was the real subject of the tax, and that the taxation of insurance policies over which a decedent retains control during his life requires taxation here. Chase National Bank v. United States, 278 U. S. 327, 49 S. Ct. 126, 73 L. Ed. 405, 63 A. L. R. 388. Likewise taxation of the interest of one of

the spouses when property held by them as tenants by the entirety passes to the survivor is thought to furnish an analogy to the present situation. Tyler v. United States, 281 U. S. 497, 50 S. Ct. 356, 74 L. Ed. 991, 69 A. L. R. 758. But in each of those cases the statute expressly covered the subject matter sought to be taxed and the question was not one of interpretation, but of constitutional power. Here we find no warrant for holding that the interests which Ellen J. Stone and Sarah J. Grinnell took upon the death of Annie Stone passed under the power of appointment. Accordingly, they did not fall within the terms of section 302 of the Revenue Act of 1926 and should not have been included in her gross estate for purposes of the estate tax.

The order of the Board of Tax Appeals is reversed.

38 In United States Circuit Court of Appeals, Second Circuit

E. MORGAN GRINNELL, AS EXECUTOR, ETC., PETITIONER

vs.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

Judgment

Filed May 7, 1934

Appeal from the United States Board of Tax Appeals.

This cause came on to be heard on the transcript of record from the United States Board of Tax Appeals, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the order of said United States Board of Tax Appeals be, and it hereby is, reversed.

It is further ordered that a mandate issue to the said Board in accordance with this decree.

WM. PARKIN, *Clerk.*

39 [File endorsement omitted.]

40 [Clerk's certificate to foregoing transcript omitted in printing.]

41 Supreme Court of the United States

Order allowing certiorari

Filed October 8, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Second Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 38,896. U. S. Circuit Court of Appeals, Second Circuit. Term No. 268. Guy T. Helvering, Commissioner of Internal Revenue, petitioner, vs. E. Morgan Grinnell, as Executor of the Estate of Annie Stone. Petition for a writ of certiorari and exhibit thereto. Filed August 7, 1934. File No. 268 O. T. 1934.

U. S. GOVERNMENT PRINTING OFFICE: 1934

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In the Supreme Court of the United States

OCTOBER TERM, 1934

No. —

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, petitioner

v.

E. MORGAN GRINNELL, AS EXECUTOR OF THE ESTATE of Annie Stone

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the Commissioner of Internal Revenue, prays that a writ of certiorari issue to review the judgment of the Circuit Court of Appeals for the Second Circuit, entered in the above-entitled case May 7, 1934, reversing the decision of the Board of Tax Appeals.

OPINIONS BELOW

The opinion of the Circuit Court of Appeals (R. 33) is reported in 70 F. (2d) 705. The memorandum opinion of the Board of Tax Appeals (R. 15–22) is not reported.

JURISDICTION

The judgment of the court below was entered May 7, 1934 (R. 38). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

May the value of property over which the decedent by will exercised a general power of appointment be included in her taxable estate, when she appointed the property to the same persons who would have taken under the will of the donor if the power had not been exercised and the appointees expressly elected to take under the will of the donor and not under the appointment?

STATUTE INVOLVED

Revenue Act of 1926, c. 27, 44 Stat. 9:

> SEC. 302. The value of the gross estate of the decedent shall be determined by including the value at the time of his death of all property, real or personal, tangible or intangible, wherever situated—
>
> * * * * *
>
> (f) To the extent of any property passing under a general power of appointment exercised by the decedent (1) by will, or (2) by deed executed in contemplation of, or intended to take effect in possession or enjoyment at or after, his death, except in case of a bona fide sale for an adequate and full consideration in money or money's worth; and
>
> * * * * *

(h) Except as otherwise specifically provided therein subdivisions (b), (c), (d), (e), (f), and (g) of this section shall apply to the transfers, trusts, estates, interests, rights, powers, and relinquishment of powers, as severally enumerated and described therein, whether made, created, arising, existing, exercised, or relinquished before or after the enactment of this Act.

(U.S.C.App., Title 26, Sec. 1094.)

STATEMENT

The facts as found by the Board of Tax Appeals (R. 16–20) may be summarized as follows:

The decedent, Annie Stone, died September 24, 1927, a resident of the United States. John O. Stone, her father, died in 1876, a resident of New York, leaving a will whereby he devised the residue of his estate to executors in trust to divide into as many shares as there were children surviving him, or who may have died leaving issue surviving him, and to keep the same invested so as to produce a regular income. The income from the shares set apart for each child was to be applied to her maintenance and education until she reached twenty-one years of age and thereafter to her use for life. Upon the death of each child her share of the estate was given to such persons and such uses as she might appoint by will and in default of appointment her share was given to her children or issue and in default of issue to her next of kin.

John O. Stone was survived by his widow (who died many years before the present decedent) and three daughters, Sarah J. Grinnell, Ellen J. Stone, and Annie Stone (the present decedent), his only children, heirs at law and next of kin. Under the will of John O. Stone, one-third of his estate was held in trust for the benefit of the decedent during her life, and upon her death was distributable to such persons and for such uses as she might appoint by will, and in default of appointment, to her issue and in default of issue to her next of kin. The sole next of kin surviving Annie Stone, the decedent, who died without issue, were her sisters, Ellen J. Stone and Sarah J. Grinnell. By her will the decedent gave, devised, and bequeathed all the residue of her estate, including her share of her father's estate over which she had the power of appointment, to her sisters in equal shares. The value of the share of her father's estate left in trust for the decedent and over which she had a general power of appointment was $75,764.26 at the date of her death.

The decedent's sisters, by writing filed with the Surrogate's Court elected to take the share of their father's estate left in trust for the decedent under the will of their father and not under the appointment made by the decedent in her will.

The Commissioner determined that the share of the decedent's father's estate left in trust for her and appointed by her to her sisters should be in-

cluded in her gross estate and accordingly asserted a deficiency in estate taxes of $9,628.78. The Board of Tax Appeals sustained the determination of the Commissioner. The Circuit Court of Appeals for the Second Circuit reversed.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In holding that the property appointed by the decedent by her will, under the general power conferred by the will of her father, did not pass under the exercise of the power within the meaning of the Revenue Act and, therefore, should not be included in her taxable estate.

2. In not holding that the property over which the decedent by will exercised the general power of appointment conferred by the will of her father, passed under the exercise of the power within the meaning of the Revenue Act and, therefore, must be included in her taxable estate, notwithstanding the property was appointed to the remaindermen under the donor's will and they expressly elected to take from the donor rather than under the exercise of the power.

3. In holding that the law of New York is controlling in determining whether property appointed under a general power exercised by will to the same persons who would have taken in default of the exercise of the power, passes under the exercise of the power within the meaning of the Federal Estate Tax Act.

4. In reversing the decision of the Board of Tax Appeals.

REASONS FOR GRANTING THE WRIT

1. The decision below in holding that the property did not pass under the exercise of the general power of appointment within the meaning of the Federal Estate Tax Act merely because it was appointed to the remaindermen under the donor's will, is in direct conflict with *Wear* v. *Commissioner,* 65 F. (2d) 665 (C.C.A. 3d), and *Lee* v. *Commissioner,* 57 F. (2d) 399 (App.D.C.), certiorari denied, 286 U.S. 563.

Respondent here conceded below that a tax on "property passing under a general power of appointment exercised by the decedent" is constitutional, and he further conceded that the power in the instant case is a general one and that it was exercised. His contention was that the property had not "passed under" the exercise of the power.

The court below expressly recognized the conflict suggested above, where it said (R. 36):

> In *Wear* v. *Commisisoner,* 65 F. (2d) 665, the Court of Appeals of the Third Circuit held that property bequeathed under a general power of appointment to the same persons who would have taken in remainder, had the power not been exercised, for purposes of Federal estate taxes, "passed" under the power and accordingly must, by

> section 302 of the Revenue Act of 1926, be included in the gross estate of the person exercising the power, and this, though the law of Pennsylvania, like that of New York, treated the property as passing under the will of the donor. In *Lee* v. *Commissioner,* 61 App.D.C. 33, 57 F. (2d) 399, the Circuit Court of Appeals of the District of Columbia reached the same conclusion, as did the Third Circuit Court of Appeals in the later case of *Wear* v. *Commissioner,* 65 F. (2d) 665. * * *
>
> With all deference to the high authority of Judge Woolley and of the other judges of the Courts of Appeal of the Third Circuit and the District of Columbia, we feel constrained to differ with the conclusions they reached. * * *

In the *Wear* case, *supra,* the court pointed out that the tax is imposed not upon the property but upon the transmission of or the privilege to transmit property, and stated the question of transmission to be not whether there has been strictly a transfer but whether the death has brought into being or ripened for the recipients valuable property rights not theretofore possessed.

In the *Lee* case, *supra,* where the nature of the tax as expounded in *Tyler* v. *United States,* 281 U.S. 497, 503, also is referred to, the court, in holding that property appointed in the exercise of a general power by will must be included in the donee's taxable estate although the appointee is the

remainderman under the donor's will, said that, since the donee of the power could have defeated the interest of the named devisee under the will of the donor, the exercise of the power in favor of such devisee at least confirmed title in him, and thus was the generating source of the title.

The decision below also seems in conflict with the principle controlling in *Stratton* v. *United States,* 50 F. (2d) 48 (C.C.A. 1st), certiorari denied, 284 U.S. 651. It does not definitely appear from the report of that case that the appointees of the property were remaindermen under the will of the donor, but this very point was urged in petitioning for certiorari in that case. (No. 303, October Term, 1931, Petition and Brief in Support, pp. 36–38; Brief in Opposition, pp. 6, 7.)

The decision below also is directly contrary to the decisions in *Pennsylvania Co. for Ins. on Lives, etc.* v. *Lederer,* 292 Fed. 629 (E.D.Pa.); *Bishop* v. *Commissioner,* 23 B.T.A. 920; and *Hancy* v. *Commissioner,* 17 B.T.A. 464.

2. The decision below is erroneous and nullifies the manifest purpose and intent of the statute. The court held that because title to the property passed, under the law of New York, to the appointees from the donor and not from the donee of the power the property did not *pass under* the exercise of the power of appointment and, therefore, was not within the statute. The conclusion of the court is based upon the state rule respecting the passage of title to property subject to a general power of ap-

pointment and a strict application of the literal language of the statute; and the court's conclusion in these respects conflicts with the principle established by this Court in *Burnet* v. *Harmel,* 287 U.S. 103, 109–110, and *Tyler* v. *United States,* 281 U.S. 497, 503.

The estate tax is imposed upon the power to transmit or the transmission of property at death, and the question in every case is not whether there has been a transfer in the strict sense, but whether the death has brought into being or ripened for the survivor (the recipients of property) valuable rights not theretofore possessed. The tax is not limited to transfers of property passing directly from the decedent, but includes as well property the completed transfer or passing of which depends upon or relates to the death of the decedent. *Tyler* v. *United States, supra,* and *Chase Nat. Bank* v. *United States,* 278 U.S. 327. The statutory provision here involved was incorporated in the Act in aid of the purpose to reach all transfers effected by the death of the decedent.

The Revenue Act of 1918 was the first statute expressly requiring property passing under a general power of appointment exercised by will to be included in the donee's estate, and the report of the Committee on Ways and Means referring thereto (H.Rep. No. 767, 65th Cong., 2d Sess., pp. 21–22) clearly shows that Congress deemed the donee of a general power of appointment over property to be the substantial owner thereof for the purposes of

the estate tax, and intended that such property should be included in the donee's estate when the power is exercised by will.

The court below in construing the statute disregarded this clear Congressional purpose and intent and in so doing violated a cardinal principle of statutory construction, as established by decisions of this Court. In *Helvering* v. *New York Trust Co.*, No. 873, October Term, 1933, decided May 28, 1934, this Court, quoting from *Ozawa* v. *United States*, 260 U.S. 178, 194, said:

> It is the duty of this court to give effect to the intent of Congress. Primarily this intent is ascertained by giving the words their natural significance; but if this leads to an unreasonable result, plainly at variance with the policy of the legislation as a whole, we must examine the matter further. We may then look to the reason of the enactment, and inquire into its antecedent history, and give it effect in accordance with its design and purpose, sacrificing, if necessary, the literal meaning in order that the purpose may not fail.

3. The decision below is contrary to and negatives the consistent departmental interpretation of the statute and administrative practice. Article 30 of Regulations 37, promulgated under the 1918 Act, specifically provided that "property appointed under a general power should be included in the estate of the appointor, although the persons to whom the appointment was made would have taken the property had the power not been exercised.

* * *." Substantially identical regulations were promulgated under the Revenue Acts of 1921 and 1924 which contained provisions identical with that of the 1918 Act. (Article 25, Regulations 63; Article 24, Regulations 68.) No similar provision was contained in Regulations 70, promulgated under the Revenue Act of 1926, but the omission seems to have been inadvertent or possibly such a provision was considered unnecessary. The provision of the Revenue Act of 1926 is substantially identical with that of the preceding Acts. The reenactment of the pertinent statutory provision of the 1918 Act without change in the 1921, 1924, and 1926 Acts in view of the administrative interpretation of the statutes prior to 1926 would seem to indicate legislative approval of the Department's construction. *United States* v. *Dakota-Montana Oil Co.*, 288 U.S. 459, 466; *Massachusetts Mutual Life Insurance Co.* v. *United States*, 288 U.S. 269, 273.

If permitted to stand the decision below must of necessity result in much confusion and uncertainty in the administration of an important provision of the revenue laws. A decision by this Court in the present case is essential to dispel this confusion and uncertainty.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

J. CRAWFORD BIGGS,
Solicitor General.

AUGUST 1934.

U. S. GOVERNMENT PRINTING OFFICE: 1934